

Horizon and ors. Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Cuttack

Decided On : Jun-30-2003

Reported in : (2004)82TTJCTk468

Judge : D Tyagi, K Gupta

Appellant : Horizon and ors.

Respondent : Assistant Commissioner of Income

Judgement :

1. Through these miscellaneous applications, this group of applicants seeks to recall the orders passed by us in the stay petitions.

2. The petitioners filed stay petitions on 30th July, 2002. At the time of hearing of these stay petitions on 13th Nov., 2002, the petitioners filed applications for withdrawal of these petitions. Hence, the stay petitions were dismissed as withdrawn vide order dt. 14th Nov., 2002.

These miscellaneous applications have been filed on 3rd April, 2003, with a prayer that the stay orders passed on 14th. Nov., 2002, may be recalled.

3. At the time of hearing, the learned counsel of these petitioners submitted that petitions for withdrawal of the stay petitions were filed because of the fact that the pressure was made by the IT Department by issue of attachment notices for recovery of the demands and disputed tax and also further pressurised to give consent for depositing some amount. He further submitted that the stay petitions

withdrawn previously may kindly be restored back by recalling the earlier order dt. 14th Nov., 2002, passed by the Tribunal.

4. The learned Senior Departmental Representative opposed this contention of the learned authorised representative and filed written submissions in support of his arguments. The Revenue's plea before us is that Sub-rule (1) of Rule 34 of ITAT Rules provides that an application under Section 254(2) of the IT Act shall clearly and concisely state that mistake apparent from record which is sought to be rectified. For the applications filed on behalf of the petitioners do not state the mistake which is apparent from record which is sought to be rectified, for which the miscellaneous application is filed, is not liable to be posted for hearing in view of the proviso 2(3) of Rule 34A of the ITAT Rules.

5. The learned Senior Departmental Representative argued that in this group of cases the petitioners had filed stay petitions before the Hon'ble Tribunal, which were posted for hearing on 13th Nov., 2002. But on the said date of hearing the applications on behalf of the petitioners were filed requesting for withdrawal of the petitions.

Accordingly the Tribunal has dismissed these stay petitions as withdrawn vide its order dt. 14th Nov., 2002. Therefore, it is not clear as to what is the mistake which is apparent on the face of the record which is sought to be rectified. Admittedly, these stay petitions had been dismissed since they were withdrawn. In the miscellaneous application, the mistake apparent from record which is sought to be rectified has to be mentioned under Rule 34A of ITAT Rules.

6. The learned Senior Departmental Representative further submitted that the petitioners have alleged that these applications were filed for withdrawal of stay petitions because of the fact that pressure was made by the IT Department by issue of attachment notice for recovery of demands and that to give consent for depositing some amount. These allegations were baseless and without any supporting evidence.

7. It was further submitted by the learned Senior Departmental Representative that in these cases the Hon'ble Orissa High Court in WP(C) 2168/2003 had passed

order No. 2 on 14th March, 2003, calling upon the Tribunal, Kolkata Bench, to take up for consideration the stay petitions which had been filed before the Tribunal. The Hon'ble High Court had directed the Tribunal to decide the same on its own merit within 3 weeks and had ordered for stay of the disputed demand "till the disposal of the stay petitions. A certified copy of the order has also been filed. The learned Senior Departmental Representative further submitted that from this order of the Hon'ble High Court it is not known under what circumstances the Hon'ble High Court called upon Tribunal, Kolkata Bench to take up for consideration and decide the petitions. It appears that the High Court might have been misled by the petitioners regarding the pendency of stay petitions before the Tribunal, Cuttack Bench, on the date of hearing on 14th March, 2003, while the Tribunal has already passed the order on the said petitions on 14th Nov., 2002, dismissing these petitions as withdrawn. The learned Senior Departmental Representative has also filed the correspondence between the Department and the petitioners to show that all facts were not brought to the notice of the Hon'ble High Court when their Lordships were deciding the above matter in writ petition.

8. Concluding his arguments the learned Departmental Representative argued that as pointed out earlier there is no mistake which is apparent from the record for rectification through these miscellaneous applications. The assessee should not be allowed to reargue the whole matter afresh since it is beyond the scope of Section 254(2). In this connection reliance was placed on the decision of Delhi High Court *Jain Dharamshala Charitable Trust v. CIT*. What can be rectified under Section 254(2) is a mistake which is apparent and patent. Unless there are manifest errors which are obvious, clear and evident the Tribunal cannot recall its previous orders. Where an appeal was dismissed by a Tribunal as withdrawn it is held that an application for rectification of the dismissal order was not competent as has been held in *Mahakoshal Ceramics v. CIT* (1983) 143 ITR 969 (MP). Therefore, the miscellaneous applications are liable to be dismissed being devoid of merit.

9. We have heard both the parties and perused the record available. So far as the conduct of the petitioners before the Hon'ble High Court, as pointed out by learned Departmental Representative in his arguments is concerned we refrain ourselves

from making any observations. As far as the merit of these miscellaneous applications is concerned the legal position is well settled that we can recall or amend our order under Section 254(2) only when there is mistake apparent from record. It will be pertinent to reproduce this section as it exists in the Act: 254(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under Sub-section (1) and shall make such amendment if the mistake is brought to its notice by the assessee or the AO : Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard :"

10. A plain reading of this makes it clear that unless there is a mistake apparent from records, the order earlier passed cannot be amended or recalled by us. Since the learned counsel of the assessee has failed to point out any mistake in our order the miscellaneous applications filed by the petitioners are dismissed.

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